

September 29, 2005

Mr. J. Chris Graves, Managing Deputy Commissioner
Department of Real Estate

Re: (1) Competitor's Dishonest Advertisement creates an Unlevel Playing Field
(2) The Advertisement also is false and misleading to the consumer
(3) The competitor's company, "THE GUILTINAN GROUP" is not licensed with the DRE

Dear Mr. Graves:

This is a complaint requesting that you stop "THE GUILTINAN GROUP" from publishing false and misleading advertisements, and also to alert you that the DRE record shows no entry of the company having ever been licensed to engage in residential real estate sales.

In the January 13, 2003 edition of the Rancho Santa Fe Review newspaper, the properties purported in the "GUILTINAN GROUP" ad as having been sold by the company (Exhibit A) is worse than being egregiously false and misleading because both the buyers and sellers were represented by other real estate companies which is substantiated by the attached documents, a part of which is the DRE record.

Knowing that your office is already overburdened with complaints, and therefore, the difficulty it must present in determining which complaints should be given top priority, endeavoring to reduce the length of time that you and your staff would normally have to devote investigating such a top priority case as this one, I spent the last several months investigating it myself and also in the production of the attached substantiating documents.

The DRE record of Brian Guiltinan

The DRE record of Brian Guiltinan, the putative owner of "THE GUILTINAN GROUP", corroborates that he was working for other companies during the time within which all of the sales in the ad were consummated (Exhibit B). Being incredulous that the DRE record does not show "THE GUILTINAN GROUP" as having ever been duly licensed to engage in residential real estate sales, I contacted one of your representatives, Karen, at your Sacramento office on April 28, 2005. She informed me that "THE GUILTINAN GROUP" is not licensed! Her direct phone #: . Since one cannot ascertain from the DRE record as to when "THE GUILTINAN GROUP" began working in real estate sales, other relevant sources revealed the following: the first statement on the company's website states, "Founded in 1996 by Brian Guiltinan. The Guiltinan Group has its reputation of being one of the most successful privately owned real estate companies in Southern California" (Exhibit C). This is a mendacious fabrication, worthy only of a person with a mentality reminiscent of some of the unscrupulous executives of such companies as ENRON, and the Tobacco Industry. Instead of the DRE record substantiating that "THE GUILTINAN GROUP" was founded in 1996, it shows that Brian Guiltinan worked in the "employ" of the following companies from 08-06-96 to 06-17-04 (Exhibit B).

1. "Salesperson license originally issued in the employ of Solana Beach Capital Corp., ...[on] 08-06-96; (Ibid)
2. "Employing broker changed to Dyson & Dyson...[on] 04-10-98" (Ibid)
3. "Activated in the employ of Pickford Realty, Inc....10-02-01;" (Ibid)
4. "Activated in the employ of Mortgage Loan Specialists, Inc....04-20-03;" (Ibid)
5. On November 12,2002, the Real Estate Commissioner, Paula Reddish Zinneman, signed an "ORDER TO DESIST AND REFRAIN" against Mortgage Loan Specialists, Inc. (Exhibit D). The DRE record shows that Mortgage Loan Specialists changed its name on 09-11-03 to "Dbas The Guiltinan Group of Mortgage Loan Specialists, Inc...."(Exhibit E). The "Dbas The Guiltinan Group of Mortgage Loan Specialists, Inc. [was] canceled as of 08-18-04" (Ibid). These are the only two entries in the attached DRE record where the Guiltinan Group is mentioned in any capacity, and both entries occurred in some instances years after the purported sales in "THE GUILTINAN GROUP" ad had been consummated.
6. There are two facts which appear to provide reliable evidence that "THE GUILTINAN GROUP" began operating in residential sales on or about 06-17-04.
 - a. The DRE record shows that Brian Guiltinan's "Employing broker changed to Ward James Wilsey, ...as of 06-17-04" (Exhibit B).
 - b. Since the MLS shows Wilsey as the broker of record for "THE GUILTINAN GROUP", it appears to be reliable evidence that the company only began operating in real estate sales on or about 06-17-04, because it is also the date on which Wilsey became Guiltinan's employing broker.

The Analysis and the Corroborating Documents contradicting The Data in "THE GUILTINAN GROUP" Ad

1. The MLS record shows that the escrow on the \$22,000,000 sale closed on 1/5/2000 (Exhibit F), which was over five years earlier than the January 13, 2000 date of THE GUILTINAN GROUP ad (Exhibit A), and, therefore, irrelevant and misleading to the consumer endeavoring to make an informed opinion about the current market values. Even though the MLS record of the \$22,000,000 sale shows "The Guiltinan Group" as the listing company (Exhibit F), the attached copy of the brochure of the property shows that the property was co-listed with two companies, Dyson & Dyson, and Gulfstream Realty (Exhibit G). To resolve the question for certain as to whom the listing and selling companies were at the time of the sale, and why the MLS shows "The Guiltinan Group" as the listing company instead of Dyson & Dyson and Gulfstream Realty, I contacted both the owner of Gulfstream Realty, George Moncada, and the selling agent Georgiana Strate. It is their recollection that the property had not been listed in the MLS at the time of the sale. Georgiana Strate informed me that she discovered that the property was for sale in a Gulfstream Realty ad in a Dream Homes magazine.

My investigation caused me to conclude that the MLS record showing “The Guiltinan Group” as the listing company was probably reported only a short time before “THE GUILTINAN GROUP” ad was published in the Rancho Santa Fe Review on January 13, 2005 (Exhibit A). In other words, “THE GUILTINAN GROUP”’s mendaciousness has been expanded to a new level- i.e., not only is the Guiltinan ad false and misleading to the consumer, as well as creating an unlevel playing field for their competitors, but recording in the MLS that “The Guiltinan Group” was the listing agent at the time of the sale of the \$22,000,000 property was perpetrated to hoodwink other agents from remembering that “The Guiltinan Group” did not even exist as a real estate company at the time of the sale!

2. The MLS record shows that the Rancho Santa Fe property that sold for \$9,700,000 on 3-1-1999, the listing company was Coldwell Banker, and the selling agent was Georgiana Strate (Exhibit H).
3. The MLS record shows that the Rancho Santa Fe property that sold for \$8,000,000 on 6-8-1999, it was listed and sold by Coldwell Banker (Exhibit I). A clarification: At the time of the sale, Dyson & Dyson was both the listing and selling company, which was later taken over by Coldwell Banker, and, therefore, Coldwell was entitled to take credit for all of Dyson & Dyson’s sales. Incidentally, the selling agent, Laura Barry, is my daughter (Ibid). She worked in the same office of Dyson & Dyson during the time that Guiltinan was employed by Dyson & Dyson. She maintains that he had a reputation in the Dyson office of being unscrupulous, which is her perception of him, too. Her phone number:.
4. The MLS record shows that the property that sold for \$8,400,000 on 10-29-2003, the listing company was Realty Specialists, and the selling office was Prudential California Realty (Exhibit J).
5. The MLS record shows that the property that sold for \$6,450,000 03-03-2003, both the buyer and seller were represented by Prudential (Exhibit K).
6. The MLS record shows that the property that sold in the Del Mar Country Club on 5-9-2003, it sold for \$5,700,000, NOT the \$6,300,000 purported in the Guiltinan ad. The listing and selling companies were Realty Specialists, and Coldwell Banker, respectively (Exhibit L).
7. The MLS record shows that the property that sold for \$2,350,000 on 11-27-2003, the listing company was Realty Specialists, and the selling office was Prudential (Exhibit M).

It is undeniable that the purpose of “THE GUILTINAN GROUP” ad is to increase market share by creating an unlevel playing field to gain an edge in the competition with other real estate companies in attracting the business of buyers and sellers. Since sales’ volume is a significant measure of any company’s or agent’s productivity, it plays a very important role in the decision-making process of the average consumer who is endeavoring to select either a real estate agent and/or a company to represent them in either the buying or selling of a residential property. Not only does the ad deliberately mislead the average consumer into believing that “THE GUILTINAN GROUP” was one

of the companies entitled to take credit for effecting the sales, but by selective omission of the pertinent time-frame within which the sales occurred, the consumer, unwittingly, is also misled into believing that the sales were relatively recent, at least it is reasonable to assume no earlier than calendar year 2004 and, therefore, the sales' data should be reliable comparable market data for the consumer to make an informed opinion about the current market values; in both cases, in addition to creating an unlevel playing field, the ad is worse than being egregiously false and misleading to the consumer as the above referenced attached documents prove conclusively.

In my opinion, any agent or company genuinely concerned about neither misleading the consumer, nor wanting to create an unlevel playing field to increase market share unfairly, should be more than willing to include the following information in any advertising campaign: (1) the name of the street on which the property was sold; (2) the price at which each property was either listed at or sold; (3) state unambiguously whether the sales' prices or volume is based on the listing or selling prices; and (4) the calendar year within which the property/s were sold. In my opinion, without the necessary information just mentioned being required to be included in ads, there are no accountable standards that either companies or agents have to abide by.

In contrast to "THE GUILTINAN GROUP" ad, attached are copies of two BARRY ESTATES, INC. sales' volume ads that I composed and published in the Rancho Santa Fe Review this year (Exhibits N & O). The BARRY ESTATES' ads state unambiguously that all of the sales occurred in the calendar year 2004, and, therefore, by implication the ads are reliable information for the consumer to make an informed opinion about current property values and the agents' track record. These two ads include the four requirements that I recommended above that, in my opinion, should be part of any responsible ad program.

In a brief conversation with you last year concerning a different case of false and misleading advertisements, you mentioned that you would be looking at the Business and Professions Code Section 16117C as being one of the codes governing fairness and responsibility in advertising. It is my understanding that the Business and Professions Code Section 17200 also addresses false and misleading advertising, too.

I am looking forward to hearing from you about the results of your investigation and decision. If I can be of any further assistance, my cell phone number:.

Thank you for your time and attention to this matter.

Yours sincerely,

Daniel J. Barry
President & Broker

Exhibits Attached:

A) Rancho Santa Fe Review Newspaper ad, Jan. 13, 2005

- B) DRE's record on Brian Guiltinan
- C) Copy of "THE GUILTINAN GROUP" website information purporting that the company was founded in 1996
- D) Copy if the DRE's "ORDER TO DESIST AND REFRAIN"
- E) DRE's record on Mortgage Loan Specialists, Inc.
- F) MLS record of the \$22,000,000 sale
- G) Copy of the brochure of the property that sold for \$22,000,000
- H) MLS record on the \$9,700,000 sale
- I) MLS record on the 8,000,000 sale
- J) MLS record on the 8,400,000 sale
- K) MLS record on the \$6,450,000 sale
- L) MLS record on the \$5,700,000 sale (not the \$6,300,000 published in the Guiltinan ad)
- M) MLS record on the \$2,350,000 sale
- N) BARRY ESTATES' ad in the Rancho Santa Fe Review showing that Catherine's and Jason's combined sales' volume based on listing prices in 2004 was over \$173,000,000.
- O) BARRY ESTATES' ad in the Rancho Santa Fe Review showing that Laura Barry's sales volume based on the listing prices that she participated in 2004 was over \$165,000,000

George Moncada's Phone Number:

Georgiana Strate's Phone Number:

Laura Barry's Phone Number:

Karen of DRE's Phone Number:

DJB/cb